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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/791,264	03/01/2004	Jeffrey T. Lucas	31116.00010.UTL	2811
36183	7590	01/25/2005	EXAMINER	
PAUL, HASTINGS, JANOFSKY & WALKER LLP P.O. BOX 919092 SAN DIEGO, CA 92191-9092			PHAN, HAU VAN	
			ART UNIT	PAPER NUMBER
			3618	

DATE MAILED: 01/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/791,264	LUCAS ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Hau V Phan	3618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 01 March 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) 16-28 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-3,5 and 11-15 is/are rejected.
- 7) Claim(s) 4,6-10 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All
  - b) Some \*
  - c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>3/1/2004</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

## DETAILED ACTION

### *Election/Restrictions*

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-15, drawn to a multi-purpose combination ladder/cart assembly, classified in class 280, subclass 30.
  - II. Claims 16, drawn to a multi-purpose cart assembly, classified in class 280, subclass 47.2.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions because claims 1-15 recite a multi-purpose combination ladder/cart assembly comprising a first frame, a second frame and a set of wheels, while claims 16-28 recite a multi-purpose cart assembly comprising a first frame, a first set of smaller wheels and a second set of larger wheels attachable to said first set of smaller wheels.
3. During a telephone conversation with Mr. Bradley Blanche on 1/19/2005 a provisional election was made without traverse to prosecute the invention of I, claims 1-15. Affirmation of this election must be made by applicant in replying to this Office

action. Claims 16-28 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

4. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

***Information Disclosure Statement***

5. The information disclosure statement (IDS) submitted on 6/16/2004 has been considered.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. **Claims 1-3, 5 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Magyar (5,839,538).**

Magyar in figures 1-5, discloses a multi-purpose combination ladder/cart assembly, comprising a first frame (13) having side rails (17) and support members (21) disposed between the side rails. Magyar also discloses a second frame (15) pivotally

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connected to the first frame. The second frame has side rails (19) and support members (23) disposed between the side rails of the second frame. The first and second frames being pivotally movable with respect to each other to configure the assembly into at least one type of ladder configuration (as shown in figure 1). The first and second frames being further pivotally movable with respect to each other into a closed position to configure the assembly into a cart configuration (as shown in figures 2-4). Magyar further discloses a set of wheels (32) connecting to the first frame capable of being arranged in a variety of possible configurations in order to provide a variably selectable center of gravity for the assembly in the cart configuration.

Regarding claim 2, Magyar discloses the center of gravity of the assembly in the cart configuration, which is capable of being changed by changing the configuration of the set of wheels connected to the first frame.

Regarding claim 3, Magyar discloses each of the possible configurations of the set of wheels provides the assembly with different traveling height and angle characteristics in the cart configuration.

Regarding claim 5, Magyar discloses a handle frame (76) pivotally connected to at least one of the first and second frames. Wherein the handle frame is pivotally movable into a closed position to configure the assembly into a dolly configuration and wherein the handle frame is pivotally movable into an open position to configure the assembly into a pull cart configuration.

Regarding claim 11, Magyar discloses the ladder configurations, which is capable to include a step ladder configuration and an extension ladder configuration.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

9. **Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Magyar (5,839,538) as applied to claim 1 above, and further in view of Hess (6,516,918).**

Magyar discloses the frame members, but fails a groove.

Hess in figure 4, teaches a tree stand with cable support comprising at least one step having a groove for containing a cord. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the first frame and the support members of Magyar with the additional of a groove as taught by Hess in order to hold a cable or a cord in place.

10. **Claims 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Magyar (5,839,538) as applied to claim 1 above, and further in view of Tornabene et al. (6,173,811).**

Magyar discloses the support member, but fails to show a plurality of receptacle support member and a foot supporting portion and a load bearing portion there from.

Tornabene et al. in figures 1-6, teach a combination hand truck, stepladder and basket carrier comprising a plurality of receptacle support members (24, 25) and

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support members (26, 28, 30). The support members form a L-shaped between a rod (42) and an outside edge (see figure 6). Each support member has a foot supporting portion and a load bearing portion. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the first frame and the support members of Magyar with the additional of a plurality of receptacle support member and support members as taught by Tornabene et al. in order to retain and support any load when the ladder is convert into a cart.

***Allowable Subject Matter***

11. Claims 4, 6-10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Evan discloses a wheel barrow and step ladder, Shoestock, Sr. discloses a combination tree stand and wheeled game carrier.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hau V Phan whose telephone number is 703-308-2084. The examiner can normally be reached on 7:30AM-4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christ Ellis can be reached on 703-308-2560. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hau V Phan  
Examiner  
Art Unit 3618

*Hau Phan*  
1/20/05

HAU PHAN  
PATENT EXAMINER